

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

KEVIN JAMES KOHUTE,

Plaintiff,

V.

TYLER POLICE DEPARTMENT,

Defendant.

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Case No. 6:23-cv-315-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Kevin James Kohute, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.

On August 17, 2023, Judge Mitchell issued a Report recommending that the Court dismiss this case with prejudice to the claims being asserted again until such time as Plaintiff can show that his conviction has been overturned, expunged by executive order, declared invalid in a state collateral proceeding, or called into question through the issuance of a federal writ of habeas corpus pursuant to *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). Docket No. 7. A copy of this Report was sent to Plaintiff at his last known address but was returned as undeliverable. Plaintiff has not advised the Court of his current mailing address as required by Local Rule CV-11(d) and has not filed objections to the Report.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 7) as the findings of this Court. It is therefore **ORDERED** that this case is **DISMISSED** with prejudice to the claims being asserted again until such time as Plaintiff can show that his conviction has been overturned, expunged by executive order, declared invalid in a state collateral proceeding, or called into question through the issuance of a federal writ of habeas corpus. This dismissal shall not prevent Plaintiff from challenging the legality of his

conviction through any lawful means, including but not limited to direct appeal or state or federal habeas corpus proceedings.

So **ORDERED** and **SIGNED** this **26th** day of **September, 2023**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE